

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :

Appellee, :

-against- :

SANTOS PETRUCELLI, :

Appellant. :

-----X

Docket No. 77-1209

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Pg 5

ON APPEAL FROM A CONVICTION  
OF THE  
UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT SANTOS PETRUCELLI

HOWARD L. JACOBS, P.C.  
Attorney for Appellant  
401 Broadway  
New York, New York 10013  
Tel.: (212) 431-3710

HOWARD L. JACOBS  
DONALD E. NAWI  
Of Counsel

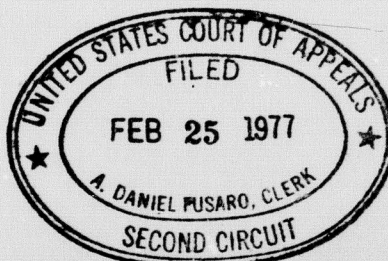




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UNITED STATES OF AMERICA, :

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Docket No. 77-1209

SANTOS PETRUCELLI, :

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BRIEF FOR APPELLANT SANTOS PETRUCELLI

Santos Petrucelli appeals from his conviction on January 4, 1977, in the United States District Court for the Southern District of New York (Werker, J.), upon a jury verdict, on one count of endeavoring to intimidate an IRS officer. 26 U.S.C. Section 7212(a). Following his commitment in September, 1976, for observation and study under 18 U.S.C. 4205, Petrucelli received three years probation, with directions to attend a mental health clinic for guidance and counselling.

ISSUE PRESENTED FOR REVIEW

Whether the Government proved beyond a reasonable doubt that Petrucelli endeavored to obstruct and impede a Revenue Officer in violation of 26 U.S.C. Section 7212(a).



### STATEMENT OF FACTS

Petrucelli was examined by a psychiatrist before trial and found sane at the time of the offense and competent to understand the charges and assist in his defense (154).\* Obviously, however, he is seriously disturbed, and that forms the background of the trivial offense of which he was convicted. There is a very substantial issue of whether his remarks to the Revenue Officer, viewed in the total context, violated the law.

The facts are simple.

The IRS disallowed a travel deduction claimed by Petrucelli on his 1973 return (27). The net additional tax was \$431 (27), IRS assessed a final deficiency (24), and turned it over to a Mr. Tacopina of the Collection Department. The \$431 became \$371 when Petrucelli received a rebate the next year (30). It became nothing when Petrucelli became entitled to a refund on his 1975 account, and that was applied to settle the deficiency (35).

On March 4, 1976, after the liability had been wiped clean, Tacopina received an anonymous telephone call, of course from Petrucelli. The conversation, as Tacopina related it on trial (Petrucelli did not testify), went like this:

(a) Petrucelli refused to identify himself, although Tacopina asked six or seven times (38).

(b) Throughout the conversation, Tacopina had no idea

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\* Numbered references are to the trial transcript. "A" denotes the Appendix to this Brief.



what the call was about. He kept asking Petrucelli what agency he wanted (43) and what the whole thing concerned (37).

(c) Petrucelli may not have been rambling, but he was "elliptical" (41). He used short, half sentences -- "like an association of ideas" (38).

(d) Petrucelli asked Tacopina if he knew what was going to happen to Esso in Brazil (Petrucelli comes from Brazil). He also vaguely mentioned military intervention, and a black woman, Mrs. Wilson, with whom Tacopina was supposed to be working (37, 42). Then:

"Then from there he went on to the fact that how would I like a punch, the blacks were going to get me, they knew where I lived, and that they would be there. In my words, my number was up." (38)

The quoted words were the basis of Count One of Superseding Indictment 76 Cr. 371 (A.4) and the ultimate conviction. In a subsequent anonymous conversation with another Revenue Officer, Petrucelli said the Government was persecuting Mexicans and South Americans and if it did not stop, they would have to put a bomb in the IRS building (47). Count Two (A.4-5) rested on this. The district court dismissed that count at the close of the Government's case because there was no proof connecting the threat to the collection of taxes (75).

Count Three (A.5) arose out of a call the IRS made to Petrucelli under a ruse (54-56) resulting in a long, deranged harangue by Petrucelli (108-15), including threats against Tacopina, against blacks, Italians, Jews, Spanish, Communists, and so on. The jury acquitted on this count (150).



### ARGUMENT

THE GOVERNMENT FAILED TO PROVE  
BEYOND A REASONABLE DOUBT THAT  
PETRUCELLI ENDEAVORED TO OBSTRUCT  
OR IMPEDE DISCHARGE OF AN AGENT'S  
DUTIES.

The Government was obliged to prove beyond a reasonable doubt that on March 4, 1976, when Petrucelli called Tacopina, he wilfully and knowingly and by threat of force endeavored to intimidate and impede an IRS officer and to obstruct and impede the due administration of the income tax laws. 26 U.S.C. Section 7212(a). The Government, we submit, failed in that effort.

The crucial words must be closely examined. Petrucelli said the blacks were going to get Tacopina, that he was going to get a punch. But Petrucelli did not say that he was going to send them after Tacopina. He seemed rather to be issuing a general warning to Tacopina against blacks. And, although he may have come to Tacopina through his now finished tax problem, nothing related his warning to the tax problem or indeed anything having to do with taxes.

We are supported in this interpretation by the surrounding facts. First and foremost is that Petrucelli insisted on anonymity. That insured that nothing he said could bear on his situation, which was already closed. Next is the tenor of the conversation. It was so vague and unrealistic ("an a association of ideas") that Tacopina had to inquire what agency Petrucelli wanted, and what the matter was all about. Finally, there are the later conversations which figured in Counts Two and Three.







These evinced Petrucelli's disturbed feelings about blacks and others, and fully explained the similar feelings expressed to Tacopina.\*

We think the only possible conclusion is that Petrucelli did not threaten Tacopina (rather he warned him about threats of others) and that in any event the threat or warning did not relate to taxes (the same situation as dismissed Count Two). However, we need not go that far. Since the Government's proof, at best, left room for conflicting inferences about what exactly Petrucelli meant, and the inference for the defense was equally persuasive, the Government failed to meet its burden, and the indictment had to be dismissed.\*\*

#### CONCLUSION

The judgment below should be reversed, with directions to dismiss the indictment.

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\* The transcript of Petrucelli's last conversation when called on the ruse will be lodged in this Court as part of the record.

\*\* We have examined numerous cases under the statute in question, among them United States v. Sciolino, 505 F.2d 586 (2d Cir. 1974), United States v. Heck, 499 F.2d 778 (9th Cir. 1974), and United States v. Variani, 435 F.2d 758 (6th Cir. 1970). None are really of much help here, one way or the other.

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ROBERT B. FISKE JR.  
U.S. ATTORNEY  
SO. DIST. OF N. Y.



